REMARKS

In the Office Action dated September 8, 2008, the Examiner provisionally rejected claims 1-25 on the grounds of Non-Statutory Obviousness-Type Double Patenting as being unpatentable over claims 1-17, 23-28, and 44-60 of copending Application No. 10/552,629; objected to pages 8, 9, and 10 of the specification for informalities; rejected claims 14-20 under 35 U.S.C. § 112 second paragraph as being indefinite; rejected claims 1-3, 6, 12-16, and 19 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,637,214 to Kahana ("*Kahana*"); rejected claims 1-3, 6, 12-16, 19, and 22-25 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,776,907 to Barlow ("*Barlow*"); rejected claims 1, 2, 6, 12-15, and 17-20 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 3,155,612 to Weber ("*Weber*"); rejected claim 4 under 35 U.S.C. § 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as being unpatentable over *Barlow* or *Kahana*; rejected claims 5 and 7-11 under 35 U.S.C. § 103(a) as being unpatentable over *Barlow*, *Kahana*, or *Weber*; and rejected claim 21 under 35 U.S.C. § 103(a) as being unpatentable over *Barlow*, *Kahana*, or *Weber*, in view of U.S. Patent No. 4,421,646 to Correge et al. ("*Correge*"), U.S. Patent No. 3,730,348 to Weis et al. ("*Weis*"), and U.S. Patent No. 3,317,044 to Marks ("*Marks*").

By this Reply, Applicant has amended claims 22, 24, and 25, has cancelled claims 1-21, 23, and 26-29 without prejudice or disclaimer, and has added new claims 36-54. Claims 22, 24, 25, and 30-54 are currently pending in this application (claims 30-35 having been previously withdrawn by the Examiner). No new matter has been introduced by this Reply.

TELEPHONE INTERVIEW

Applicant wishes to thank Examiner Benjamin Kurtz for the telephone interview on February 2, 2009. During the interview, the Examiner and Applicant's representative, discussed the Examiner's restriction requirement of June 12, 2008. Applicant's representative submitted that the Examiner's restriction of June 12, 2008 was unnecessary since no restriction was made in Applicant's related PCT application. The Examiner disagreed and maintained that the restriction was proper.

NON-STATUTORY DOUBLE PATENTING

In the Office Action, the Examiner provisionally rejected claims 1-25 on the grounds of Non-Statutory Obviousness-Type Double Patenting as being unpatentable over claims 1-17, 23-28, and 44-60 of copending Application No. 10/552,629.

Applicant respectfully disagrees with the assertions made by the Examiner in formulating the provisional obviousness-type double patenting rejections set forth at pages 2-3 of the Office Action. In order to expedite prosecution of this application, however, Applicant submits herewith a Terminal Disclaimer to obviate the double patenting rejections. The filing of the Terminal Disclaimer in no way manifests an admission by Applicant as to the propriety of the double patenting rejections. See M.P.E.P. § 804.02 citing Quad Environmental Technologies Corp. v. Union Sanitary District, 946 F.2d 870, 20 USPQ2d 1392 (Fed. Cir. 1991). Applicant reserves the right to traverse the provisional double patenting rejections at a later date. Applicant respectfully requests the withdrawal of the double-patenting rejection in view of the Terminal Disclaimer attached hereto.

OBJECTION TO SPECIFICATION

The Examiner also objected to pages 8, 9, and 10 of the specification for making reference to a claim number. Applicant has amended the Specification to remove the references. Accordingly, Applicant requests that the Examiner withdraw the objection.

REJECTIONS UNDER § 112

In the Office Action, the Examiner rejected claims 14-20 under 35 U.S.C. § 112 second paragraph as being indefinite for having insufficient antecedent basis for the term "said slit shaped openings." Although Applicant does not necessarily agree with the Examiner's rejection, Applicant has canceled claims 1-21 rendering the Examiner's rejection moot. Accordingly, Applicant requests that the Examiner withdraw the § 112 rejection.

REJECTIONS UNDER § 102(b)

The Examiner rejected claims 1-3, 6, 12-16, and 19 under 35 U.S.C. § 102(b) as being anticipated by *Kahana* and rejected claims 1, 2, 6, 12-15, and 17-20 under 35 U.S.C. § 102(b) as being anticipated by *Weber*.

Although Applicant does not necessarily agree with the Examiner's rejections, in order to expedite prosecution of this application, Applicant has canceled claims 1-21 thereby rendering the Examiner's rejections moot. Accordingly, Applicant requests that the Examiner withdraw these § 102(b) rejections.

Moreover, claims 1-3, 6, 12-16, 19, and 22-25 were also rejected under 35 U.S.C. § 102(b) as being anticipated by *Barlow*. Regarding claims 1-3, 6, 12-16, and 19, Applicant notes that the Examiner's rejection is moot for the same reasons as

discussed above. Applicant respectfully traverses this rejection with respect to claims 22, 24, and 25.

As an initial matter, Applicant submits that the Examiner has made an improper § 102(b) rejection. In order for a reference to be prior art under § 102(b) the publication or issue date of the reference must be more than one year prior to the effective filing date of the application. See M.P.E.P. 706.02(a)(II)(A). The publication date of *Barlow* is August 17, 2004, while the priority date of Applicant's Application is April 7, 2003. Therefore, Applicant's priority date predates the publication date of *Barlow*.

Additionally, in order to properly anticipate Applicant's claims under § 102, a single prior art reference must disclose each and every element of the claim at issue, either expressly or under principles of inherency. *See* M.P.E.P. § 2131.

Barlow discloses "[a] device for the deionization of incoming water. The device includes a tank and a generally hollow distributor tube in that tank for ingress into and downward movement of the incoming water through that tank. Slots adjacent the bottom of the generally hollow tube and near the bottom of the tank are provided for distributing the incoming water out of the hollow tube." (Abstract.)

Barlow, however, does not disclose at least one "slit-shaped opening [having] a first extension and a second extension . . . wherein the second extension is . . . significantly shorter than a length of said at least one slit-shaped opening in the flow direction" (emphasis added), as recited in amended independent claim 22. Therefore, *Barlow* does not disclose each and every element of claim 22.

Additionally, the Examiner contends that "Barlow teaches . . . an outlet (18) to permit discharge of fluid form [sic] the inner space." (Office Action at 6, emphasis

added.) Applicant disagrees. *Barlow* discloses that "[t]he water is continuously discharged through these slots 20 as pressurized water enters the tank 12 and its generally hollow distributor tube 18. As the water is discharged through these slots 20, it forces the remaining water in the bed of resin 14 upwardly through that bed, where it becomes deionized." (Col. 4 line 66 - col. 5, line 4, emphasis added.) "The deionized water at the top of the tank 12 leaves the tank 12 through the continuous path formed by the upper distributor basket 38 and the outlet 28 of the tank closure 24." (Col. 5, lines 51-54, emphasis added.) *Barlow* further teaches away from the Examiner's interpretation by stating that "[a]s compared to the prior art resin systems of FIG. 2, i.e., the so-called "down-flow" systems, it has been surprisingly found that the mere reversal of the water flow in the direction shown in FIG. 1 provides substantial operating advantages." (Col. 6, lines 10-14.) In other words, distributor basket 38 and outlet 28 are the outlet point of *Barlow* and not distributor 18. (See also col. 4, lines 48-51.)

For at least the aforementioned reasons, the § 102(b) rejection of amended independent claim 22 should be withdrawn and the claim allowed. Additionally, claims 24, 25, and 36-54 should be allowed due to their dependence from independent claim 22 and their recitations of additional patentable subject matter.

REJECTIONS UNDER § 102(b) and/or § 103(a)

In the Office Action, the Examiner rejected claim 4 under 35 U.S.C. § 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as being unpatentable over *Barlow* or *Kahana*; rejected claims 5 and 7-11 under 35 U.S.C. § 103(a) as being unpatentable over *Barlow*, *Kahana*, or *Weber*; and rejected claim 21

under 35 U.S.C. § 103(a) as being unpatentable over *Barlow*, *Kahana*, or *Weber*, in view of *Correge*, *Weis*, and *Marks*.

Although Applicant does not necessarily agree with the Examiner's rejections, in order to expedite prosecution of this application, Applicant has canceled claims 1-21 rendering the Examiner's rejections moot. Accordingly, Applicant requests that the Examiner withdraw these § 102(b) and/or § 103(a) rejections.

CONCLUSION

In view of the foregoing amendments and remarks, Applicant respectfully requests reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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Dated: February 9, 2009

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